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No. 80-886

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

HAROLD E. BAGNALL, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT HAROLD E. BAGNALL, ET AL.'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE COURT BELOW WAS CORRECT IN CHARACTERIZING THE PETITIONER'S FINANCE CHARGE AS A PENALTY WHICH IS PROHIBITED BY BOTH SECTION 2, ELEVENTH, OF THE RAILWAY LABOR ACT AND THE COLLECTIVE BARGAINING AGREEMENTS INVOLVED.

II. WHETHER THE COURT BELOW WAS CORRECT IN ENTERTAINING JURISDICTION OF THE CASE.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT HAROLD E. BAGNALL, ET AL.'S BRIEF IN OPPOSITION

This brief is being submitted on behalf of the individual Respondents, Harold E. Bagnall, Donald Bauer, Richard L. Berry, Kraig A. Hilbink, Roy A. C. Hill, R. T. Kirchoff, Thomas D. Klemens, David Le Boutillier, R. D. Longwish, Robert G. Maiers, Floyd E. Murray, William W. Niendorff, Allan G. Sawatsky, Clyde B. Smith and N. J. Vasilaros.

As a preliminary matter it should be pointed out that these Respondents have filed their own Petition

For Writ of Certiorari to review the portion of the opinion of the Court of Appeals which was adverse to them. It is No. 80-861 and is currently pending before the Court.

ARGUMENT

THE DECISION BELOW IS IN ACCORD WITH THE APPLICABLE PRECEDENTS OF THIS COURT.

A. The Result Below Does Not Involve A Finding That The Petitioner Breached Its Duty Of Fair Representation.

The Petitioner mischaracterizes the holding below as being one which involves its breach of the duty of fair representation. That simply is not the case. For the convenience of the Court a copy of the complaint in the District Court, No. 78-128-A, is reproduced in the Appendix to this brief. A perusal of the complaint and the opinion of the Court of Appeals will show that the Petitioners are complaining in this Court about the fact that the Second Claim For Relief in the complaint was decided in favor of the Respondents. That claim simply does not involve any allegations of a breach of the duty of fair representation. See Part III of the opinion below where the Court of Appeals stated:

> The union is entitled to its monthly stipend, to be sure, but no more. Nothing in the collective bargaining agreement gives the union the right to regulate a non-member's method of payment. The non-member may not be required by the union to utilize the ALPA finance plan, thus the union may exact no penalty of non-members on this account nor collect a finance charge of them by compulsion. Accordingly, the only obligation of the non-member being to pay, the requirements of 45 U.S.C.

> § 152, Eleventh (a), are met in that the "periodic" monthly payments of a service charge equal to the dues of a member do not include "fines" or "penalties" for the union may not exact a finance charge under the terms of the collective bargaining agreement. (626 F.2d 341)

As is apparent from the above, neither the claim in the complaint nor the Court of Appeals' opinion deciding the claim in favor of the Respondents deal in any way with the Petitioner's duty of fair representation.

Therefore, the Petitioner's statement on page 6 of the Petition that, "The decision below conflicts with this Court's decisions authoritatively defining the *content* of the duty of fair representation," is simply wrong. In addition, the cases cited from *Steele* v. *Louisville & N.R. Co.,* 323 U.S. 192 (1944), to *Vaca* v. *Sipes,* 386 U.S. 171 (1967), and *Motor Coach Employees* v. *Lockridge,* 403 U.S. 274 (1971) are inapposite. The applicable precedent is *Felter* v. *Southern Pacific Co.,* 359 U.S. 326 (1959). In *Felter* this Court held that provisions of a collective bargaining agreement which conflict with the Railway Labor Act support federal question jurisdiction and a declaratory judgment action by an employee seeking to have enforcement of the offending provisions enjoined. *See also, Brotherhood of Railroad Trainmen* v. *Smith,* 251 F.2d 282 (6th Cir. 1968); *Kidder* v. *Eastern Airlines, Inc.,* 469 F.Supp. 1060 (S.D. Fla. 1978).

In Part IV of its opinion the Court of Appeals does refer to cases involving a union's breach of the duty of fair representation but they are cited in support of the proposition that under the Railway Labor Act disputes between an employee and his union representa-

tive are within the jurisdiction of a District Court and are not within the exclusive jurisdiction of the adjustment boards created by the Act. As will be shown below, that proposition is clearly correct and applicable to this case.

In sum, the result below about which the Petitioner complains simply does not involve a finding that the Petitioner breached its duty of fair representation.

B. Under The Circumstances Of This Case, The Respondents Were Not Required To Exhaust Contract Remedies Before Seeking Redress In The District Court.

The short answer to the Petitioner's contention that the individual Respondents have failed to exhaust available contract remedies is that there are no contract remedies to exhaust in this case. That this is so is best demonstrated by *Klemens* v. *Air Line Pilots Ass'n, Int'l,* 484 F.Supp. 186 (W.D. Wash. 1980). Three of the plaintiffs in that case are respondents in this case and the agreement there involved is also the Northwest Airlines agreement involved in this case. While not identical, the essential features of the Braniff Airways and Trans World Airlines agreements have the same effect as the Northwest agreement. While the claim in *Klemens* differs from the claims in this case, it also arose under the union security provision which is involved in this case. In *Klemens* the Petitioner (ALPA or Union in the extract below) also claimed that resort to the contractual grievance-arbitration procedure was required. In denying this claim the court said:

> The Union contends that the plaintiffs' claims are strictly contractual and bound by the grievance-arbitration procedure set forth in section (e) of

the Union Security Agreement. ALPA denies that plaintiffs have a cause of action under the Railway Labor Act which is cognizable by this Court, and it moves to dismiss the Complaint. The union insists that arbitration is compelled both by the Railway Labor Act and by general federal labor policy, as developed by case law. Finally, the defendant argues that no rights arise under the federal statute unless plaintiffs have first been discharged. As an alternative to an Order of Dismissal, ALPA seeks summary judgment in its favor.

After reviewing the Motion, memoranda, and pleadings filed herein, and being fully advised, the Court rules as follows:

Plaintiffs' claim is within the subject matter jurisdiction of this Court if it arises "under any Act of Congress regulating commerce." 28 U.S.C. § 1337. The Railway Labor Act has been held to qualify as such an "Act" for purposes of federal court jurisdiction. *See, e.g., Felter* v. *Southern Pacific Co.,* 359 U.S. 326, at 329, 79 S. Ct. 847, at 851 (1959). Indeed, Congress intended labor organizations to "be held accountable for violations of section 2 . . . (Eleventh)", *Brady* v. *Trans World Airlines,* 401 F.2d 87, at 102 (3rd Cir. 1968), *cert. denied* 393 U.S. 1048, *rehearing denied* 394 U.S. 955 (1969).

Plaintiffs have stated a cause of action under Section 2, Eleventh, of the Railway Labor Act, 45 U.S.C. § 152, Eleventh. Defendant suggests that this provision merely authorizes a union shop (and by construction, an "agency shop"). However, this reading ignores the proviso to that section which states that such labor agreements shall not require membership (or by construction, the payment of alternative "service charges") from employees whose union membership was

> denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership.

The mere fact that section (a) of the Union Security Agreement between Northwest and ALPA incorporates the language of Section 2, Eleventh, does not reduce public rights under the statute to exclusively private contractual rights. *See Brady, supra.* 401 F.2d at 95-96. This Court's jurisdiction over claims arising under federal statutes is not so easily foreclosed.

Moreover, the defendant has cited no specific language in the Railway Labor Act which requires the present dispute to be arbitrated. At 45 U.S.C. §§ 183-184, the Act designates certain disputes "between an employer or [a] group of employees and a carrier or carriers" for mediation or arbitration, but the Act does not require such handling of disputes between employees and their bargaining representatives. In fact, the defendant conceded that the present claim is not within the jurisdiction of the System Board of Adjustment (in oral agument before this Court, October 12. 1979). *See also Brady, supra,* 401 F.2d at 92. It follows that

> Since the controversy arises under the laws of the United States, 45 U.S.C., Section 151 et seq., . . . the case is within the jurisdiction of the District Court, 28 U.S.C., Sections 1332 and 1337, unless under the Railway Labor Act jurisdiction is vested in one of the administrative boards. *Brotherhood of Railroad Trainmen* v. *Smith,* 251 F.2d 282, at 285 (6th Cir. 1958).

The defendant union contends that broad federal policy favors the arbitration of this labor dispute, but its authority for this contention is in-

apposite. ALPA cites cases arising in the collective bargaining context, i.e. between labor and management. There, arbitration is favored as a "substitute for industrial strife", *United Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, at 578, 80 S. Ct. 1347, at 1350 (1960), or as a *quid pro quo* for a union's agreement not to strike, *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770,* 398 U.S. 235, at 248, 90 S. Ct. 1583, at 1591 (1970). Those rationales for arbitration do not apply in the present suit by employees against their bargaining representative.

Moreover, this case is distinguishable from those cited by the defendant in which federal courts required employees to pursue intraunion remedies before going to court. *See Buzzard* v. *Local Lodge 1040 of the International Association of Machinists and Aerospace Workers,* 480 F.2d 35 (9th Cir. 1973); *Frederickson* v. *System Federation No. 114,* 436 F.2d 764 (9th Cir. 1970). Here, by contrast, there is no allegation of unexhausted remedies available under ALPA's Constitution or bylaws. Rather, the question is whether the grievance procedure outlined in section (e) of the Union Security Agreement is binding upon plaintiffs in the claim at bar.

On these facts, section (e) of the Union Security Agreement is not applicable. By its express terms, it applies only to

> A grievance by an employee who is to be discharged as the result of an interpretation or application of the provisions of this Union Security Agreement. . . .

The Plaintiffs correctly point out that

> since the Plaintiffs are currently paying the required service fees, there is nothing to trigger the sequence of events leading up to the contractual arbitration proceeding.

> Plaintiffs' Memorandum, filed September 14, 1979, at pp. 5-6. The defendant concedes that there is no allegation that ALPA has a pending request for Northwest to discharge the plaintiffs. Therefore, this Court need not now decide whether section (e) would bind the plaintiffs in the event of their discharge. It is enough to decide that where, as here, the employees have neither been discharged nor face imminent discharge, the grievance procedure under section (e) is inapplicable.
>
> In addition, there is no merit to defendant's suggestion that plaintiffs have no justifiable claim until they are discharged. Their payment under protest of union service charges, if wrongfully required of them, gives rise to actionable damages under the proviso to 45 U.S.C. § 152, Eleventh.
>
> Because neither the Railway Labor Act nor the Union Security Agreement requires the arbitration of plaintiffs' dispute, they may invoke the jurisdiction of this Court to pursue their statutory claims under 28 U.S.C. § 1337. The defendant's Motion to Dismiss is accordingly DENIED. (484 F.Supp. 188-89)

What the court said in *Klemens* about the Northwest contract is equally applicable to the Braniff and TWA contracts.

If the dissimulation in the Petitioner's argument is stripped away, its argument is that the only way employees can contest the validity of the fees demanded under the union security agreements here involved is to refuse to pay the fees; be discharged (even though execution of the discharge may be postponed) and then request arbitration under the contract. That is not, and should not be, the law because it requires the employee to risk his job in order to get a determination of his legal rights. Under the agreements, if an employee

loses the arbitration, his discharge is executed. If that route is followed, the question before the arbitrator is whether the fees have been paid and that simply is not related to the legal questions raised in this lawsuit. Here, the questions raised are questions of law which pertain to the amount of fees which can be lawfully demanded of the respondents under the Act. Questions of law are for the courts, not arbitrators, to decide. *Alexander* v. *Gardner-Denver Company,* 415 U.S. 36 (1974).

It is one thing to require a discharged employee to resort to contractual remedies before seeking legal relief. It is quite another thing to require a working employee to be discharged in order to obtain a legal ruling on the validity of his union representative's actions toward him. In other words, the record in this case does not show the presence of the essential prerequisites—refusal to pay the fees and discharge—for the contractual arbitration process. Clearly, in the absence of these prerequisites there is nothing to arbitrate. *Klemens* v. *Air Line Pilots Ass'n, Int'l, supra.*

The dispute in this case arises under the Railway Labor Act and is between employees and their union representative. The courts have jurisdiction of such disputes. *Czorsek* v. *O'Mara,* 397 U.S. 25 (1970); *Conley* v. *Gibson,* 355 U.S. 41 (1957); *Steele* v. *Louisville & N.R. Co., supra; Richins* v. *Southern Pacific Co.,* 620 F.2d 761 (10th Cir. 1980); *Brady* v. *Trans World Airlines,* 401 F.2d 87 (3d Cir. 1968); *Rumbaugh* v. *Winifrede Railroad Co.,* 331 F.2d 530 (4th Cir. 1964); *Brotherhood of Railroad Trainmen* v. *Smith, supra; Klemens* v. *Air Line Pilots Ass'n, Int'l, supra.* And, despite the Petitioner's assertion to the contrary in note 9, page 12, of the petition, the result below is

not inconsistent with either *Richins* v. *Southern Pacific Company, supra,* or *Goclowski* v. *Penn Central Transp. Co.,* 571 F.2d 747 (3d Cir. 1977).

CONCLUSION

The decision below was correctly decided in accordance with the decisions of this Court. Therefore, there is no reason to grant the Petition and it should be denied.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED FEB. 27, 1978
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No.: 78-128-A

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v.

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NORTHWEST AIRLINES, INC.
Minneapolis-St. Paul Int'l Airport
St. Paul, Minnesota 55111
Defendants.

COMPLAINT

(For declaratory judgment, injunction, compensatory and punitive damages, and attorneys' fees.)

JURISDICTION

(1) This Court has jurisdiction over the claims for relief herein stated by virtue of 28 U.S.C. § 1337 in that such claims arise under an Act of Congress regulating commerce, to wit: the Railway Labor Act, 45 U.S.C. § 151, *et seq.*

(2) This is an action for monetary damages and injunctive relief to enforce Plaintiffs' rights under Section 2, Eleventh, of the Railway Labor Act, 45 U.S.C. § 152, Eleventh, and certain collective bargaining agreements, and for a declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

PARTIES

(3) Plaintiffs are citizens of the United States and residents of the states indicated in the heading. Plaintiffs Bagnall, Bauer, Hilbink, Kirchoff, LeBoutillier, Longwish, Murray and Vasilaros are employees of Trans World Airlines, Inc. (TWA). Plaintiffs Hill, Klemens, Maiers and Niendorff are employees of Northwest Airlines, Inc. (Northwest). At all relevant times, Plaintiffs have been subject to collective bargaining arrangements between their employers and the Air Line Pilots Association, International, (ALPA), a labor organization, and have not been members of ALPA or any other labor organization.

(4) TWA and Northwest are operating in interstate commerce. TWA is a body corporate, organized under the laws of the State of Delaware with its principal office at 605 Third Avenue, New York, New York, and Northwest is a body corporate, organized under the laws of the State of Minnesota with its principal office at the Minneapolis-St. Paul International Airport, St. Paul, Minnesota. In their relations with their employees, both are governed by the Railway Labor Act, 45 U.S.C. § 151, *et seq.*

(5) Defendant ALPA is a labor union and is an unincorporated association with its principal office at 1625 Massachusetts Avenue, N.W., Washington, D.C. At all relevant times, ALPA has been the representative of the Plaintiffs as that term is defined in Section 1, Sixth, of the Railway Labor Act, 45 U.S.C. § 151, Sixth.

(6) ALPA, TWA and Northwest are doing business within this District and are subject to being sued here pursuant to the provisions of 28 U.S.C. § 1391, Rule 4, of the Federal Rules of Civil Procedure and Code of Virginia, Annotated §§ 8.01-301 and 305.

FACTS

(7) Under color of 45 U.S.C. § 152, Third, Fourth, and Ninth, ALPA, at all relevant times, has been recognized by TWA and Northwest as the exclusive representative of all employees in bargaining units which include the Plaintiffs. As such, ALPA owes each Plaintiff the duty of fair representation; that is, to represent them without being arbitrary or discriminatory or acting in bad faith.

(8) ALPA has negotiated successive written collective bargaining agreements with TWA and Northwest which have purported and do now claim to govern the terms and conditions of Plaintiffs' wages, hours, and working conditions. Since October 3, 1972 an "Agency Shop" agreement, a true and accurate copy of which is annexed hereto as Exhibit A, has been in effect between Northwest and ALPA. A similar "Agency Shop" agreement, a true and accurate copy of which is annexed hereto as Exhibit B, has been in effect between TWA and ALPA since January 1, 1976. Pursuant to the "Agency Shop" provisions of these agreements, Plaintiffs are, and at all relevant times have been, required to pay to ALPA a service charge equivalent to the dues required of ALPA's members. The dollar amount of the service charge each Plaintiff is obliged to pay to ALPA is determined by multiplying his gross pay times a percentage figure, currently 1.35 percent, unilaterally determined by ALPA.

(9) The wages of the members of the bargaining units to which Plaintiffs belong are such that the difference between the lowest and highest dues or fees paid by members of the unit currently is approximately $850.00 per year. At all relevant times, there have been ALPA members in the bargaining units to which Plaintiffs belong who are obligated to and do pay the lowest dues.

(10) At all relevant times, the service fees paid to ALPA by the Plaintiffs have exceeded the lowest regular dues paid to ALPA by members of the respective bargaining units who are both full-time employees and members of ALPA.

(11) Plaintiffs have been told by authorized representatives of TWA, Northwest and ALPA that, in accordance with the terms of the respective agreements, should they fail to pay the service charges in full, ALPA would request, and TWA and Northwest would grant, their termination.

(12) Plaintiffs have in the past notified, and again by this Complaint do hereby notify, TWA, Northwest and ALPA that they object to the use of their service charges for any purposes other than to defray ALPA's costs of collective bargaining, contract administration, and grievance processing of their respective units.

(13) At all relevant times, monies coerced from Plaintiffs through service charges have been co-mingled with dues collected from ALPA members and, in part, have been expended for purposes other than negotiating and administering collective bargaining agreements covering Plaintiffs' bargaining units and adjusting and settling disputes on behalf of the members of such units.

FIRST CLAIM FOR RELIEF

(14) Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 above.

(15) The collection of service charges from Plaintiffs pursuant to the "Agency Shop" provisions is violative of Section 2, Eleventh, of the Railway Labor Act in that:

1) imposing upon and collecting from nonmembers of ALPA service charges calculated as a percentage of salary

is *per se* violative of Section 2, Eleventh, because such charges are not uniform; and

2) requiring Plaintiffs, notwithstanding their protests, to pay service charges that exceed the dues required of any member of ALPA in the bargaining unit burdens them with a disproportionate share of the costs of collective bargaining.

SECOND CLAIM FOR RELIEF

(16) Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 above.

(17) Notwithstanding the terms of the "Agency Shop" provisions of these contracts which required payment of service charges monthly, during the relevant period ALPA has encouraged nonmembers to pay estimated yearly service charges in advance. ALPA has imposed a penalty, currently calculated at an annual rate of 18% of the unpaid balance, upon nonmembers, including some of the Plaintiffs, who chose not to pay their estimated annual service charges by the end of January of the year in which the service charges are due.

(18) Collection by ALPA of interest on the unpaid balance of the estimated yearly service charge is a violation of Section 2, Eleventh, of the Railway Labor Act, 45 U.S.C. § 152, Eleventh, and a violation of the respective contracts between ALPA and Plaintiffs' employers. Section 2, Eleventh, of the Railway Labor Act does not authorize collection of monies in excess of those required by the agreement.

THIRD CLAIM FOR RELIEF

(19) Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 above.

(20) As Plaintiffs' exclusive bargaining representative, defendant ALPA is subject to a duty to use reasonable efforts to give the Plaintiffs information which is relevant to affairs entrusted to it, including conditions of employment imposing upon Plaintiffs a financial obligation to defendant ALPA, and which, as ALPA has notice, the Plaintiffs would desire to have.

(21) At all relevant times, defendant ALPA has known, or has had reason to know, that Plaintiffs and other members of Plaintiffs' bargaining units have not desired to be affiliated with defendant ALPA, and that Plaintiffs and other members of Plaintiffs' bargaining units object to some or all of the activities undertaken by ALPA and supported, in part, by service charges levied upon non-members. Defendant ALPA has also known, or had reason to know, that Plaintiffs and other members of Plaintiffs' bargaining units would desire to be fully and fairly apprised of the nature and extent of the financial obligations to ALPA that may lawfully be required of them. Despite this notice, and in breach of its duty of fair representation, ALPA has negotiated, enforced, and threatened to enforce "Agency Shop" agreements with TWA and Northwest that do not fairly inform employees that:

1) their financial obligations to ALPA lawfully may be limited to the payment of a *pro rata* share of the costs of negotiating and administering collective bargaining agreements with their employer and adjusting and settling disputes on behalf of the members of their bargaining units; and

2) they may not be required to contribute a sum greater than the lowest contribution made by any member of ALPA.

(22) By agreeing to and cooperating in the enforcement of the "Agency Shop" provisions, TWA and Northwest

have violated the provisions of Section 2, Fourth, of the Railway Labor Act, 45 U.S.C. § 152, Fourth, by unlawfully assisting a representative of their employees.

REMEDY

WHEREFORE, Plaintiffs pray that this Court issue a judgment as follows:

UNDER THE FIRST CLAIM FOR RELIEF

1) Declaring that ALPA may not lawfully collect from Plaintiffs service charges in excess of the minimum dues paid by an ALPA member in the respective units; and

2) Permanently enjoining ALPA from collecting from Plaintiffs service charges in excess of the minimum dues paid by an ALPA member in their respective units; and

3) Awarding Plaintiffs money damages in the amount of the funds unlawfully exacted from them; and

4) Awarding Plaintiffs' counsel attorneys' fees in such amount as may be determined to be appropriate by the Court; and

5) Awarding Plaintiffs such other and further relief as the Court deems just and proper.

UNDER THE SECOND CLAIM FOR RELIEF

1) Declaring that the agreements between ALPA and TWA and Northwest do not authorize collection of any interest on the unpaid balance of the estimated yearly service charge; and

2) Permanently enjoining ALPA from imposing any penalty upon Plaintiffs who do not choose to pay their service charges in advance; and

3) Awarding Plaintiffs money damages in the amount of the penalties unlawfully exacted from them; and

4) Awarding Plaintiffs' counsel attorneys' fees in such amount as may be determined to be appropriate by the Court; and

5) Awarding Plaintiffs such other and further relief as the Court deems just and proper.

UNDER THE THIRD CLAIM FOR RELIEF

1) Declaring that the failure of the defendants to include proper terms in their respective agreements is a breach of the duty of fair representation owed by ALPA to Plaintiffs and is unlawful assistance by TWA and Northwest to a representative of their employees in violation of 45 U.S.C. § 152, Fourth; and

2) Permanently enjoining ALPA, TWA and Northwest from negotiating, enforcing, or threatening to enforce any "Agency Shop" provision in any collective bargaining agreement between ALPA and TWA and Northwest that does not fairly and fully advise nonmembers of their right to limit their financial obligation to ALPA to a *pro rata* share of the costs of negotiating and administering collective bargaining agreements with their employer, and adjusting and settling disputes on behalf of employees in their bargaining units, which share shall not exceed the least share of such costs paid by any full member of ALPA; and

3) Awarding Plaintiffs' counsel attorneys' fees in such amount as may be determined to be appropriate by the Court; and

4) Awarding Plaintiffs such other and further relief as the Court deems just and proper.

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